be enforced, the so-called principles to serve as a guide to nations in the practice of intervention become mere platitudes or "high-sounding phrases." The vagueness and uncertainty of the rules under consideration are shown by the frequent use of such phrases as "violations of international morality," "rights of humanity," "solidarity of mankind," "humanitarian intervention," and "tribunal of reason as interpreted and supported by the consensus of opinion in a preponderating majority of the states."

It is evident that the writer is dealing with political relations and conduct which have not yet been subjected to the limitations and requirements which would dignify their regulation by the name of law. The subject of international law suffers from just such attempts to bring within its scope uncertain and ill-defined efforts to control political conduct. Not that the painstaking and systematic consideration of such subjects as intervention in relation to international law is fruitless, but rather that the attempt to bring within the compass of law such indefinable and unregulated conduct as is frequently exhibited in connection with intervention weakens respect for such portions of the field as may properly be considered as law.

What may be termed a "pious wish" that the rules and principles relating to intervention may eventually be formulated into rules of law is shared by all teachers and students of international law as well as by many diplomats and statesmen, but it is doubtful whether this wish will be hastened in its consummation by claiming that rules have been formed where there are none or where they are as yet in a quite inchoate stage.

The precept that the author claims to have first formulated—"that no state shall unreasonably insist upon its interests to the detriment of the opposing rights and interests of other states"—is like the Roman proverb that the law aims to give every man his due. The proverb evaded the real issues—what is a man's due, who shall decide as to each man's due, and when each man's lot is once determined how shall he be assured of the possession and enjoyment of that which belongs to him? What are the proper and legitimate interests of states which shall be inviolate against interference by other states, who shall determine as between conflicting interests, how shall interference with the legitimate interests of a state be prevented, and if not prevented, how can reparation be assured—these are questions which remain largely unanswered.

There is an appendix containing a critical bibliography on intervention which will be useful to those who wish to examine many authorities on this subject.

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PHILOSOPHY IN THE DEVELOPMENT OF LAW. By Pierre de Tourtoulon. Translated by Martha McC. Read. The Modern Legal Philosophy Series, Vol. XIII. New York: The Macmillan Co. 1922. Pp. lxi, 653.

This last volume of the Legal Philosophy Series is a translation of "Les principes philosophiques de l'histoire du droit," by Professor de Tourtoulon, and the title in the original seems to indicate more accurately the scope of

the volume than does the English rendering. Whenever the word philosophy appears in a title the question that naturally arises is, what is the philosophic position of the author? In the case of Professor de Tourtoulon this question hardly admits of a categorical answer, for he himself asserts in the Appendix that he does not claim to be a philosopher by profession, but is content with the more modest title of a historian of law. His purpose seems to be to work out the philosophic principles which may be discovered in the history of law and to present them fully and clearly so that their excellencies and defects may be seen. He brings to his task great wealth of knowledge, subtle analytical power, and a penetrating critical acumen. In his introduction the author enrolls himself in what he calls the "Causalist" school, which "confines itself to studying the cause of each institution without believing in the possibility of evolving its laws." The law originates under various influences, no single one of which can be the sole guide of history and none "can assume the title of a law of nature." He here parts company with the Determinists, who believe in laws of history which "render apparent the direction that the human intellect has of necessity followed and must of necessity follow in the future," while, on the other hand, he apparently denies to the moral sciences that high destiny which enables them to escape universal causality. He thus "emphasizes the complexity of a problem which certain writers have tried to solve in far too simple a fashion" (page xlviii). He is distinctly a pluralist rather than a monist, and one will seek in vain for a discussion of the philosophic abstractions so characteristic of the metaphysical jurists of the nineteenth century or of the law-of-nature school of the preceding centuries. "Metaphysics is the science of truths which cannot, so far as we know, be reduced to unity" (page 478). He therefore ignores the various forms of the "absolute," so dear to the hearts of the metaphysicians, and seems even to doubt the finality of the ultimate categories of juristic thought that have been in vogue from the time of Aristotle. Nor can he be said to be committed explicitly to the doctrines of the modern sociological jurists. He gives us an account of philosophic ideas rather than a philosophy of law in the commonly accepted sense.

One would get but little satisfaction from this book who would ask the metaphysical questions, what is "law," "jurisprudence," "justice"?—the juristic-philosophic trinity that has puzzled jurists from Ulpian down. In regard to the first of these, the author says: "One can scarcely give it a thorough definition which would be applicable in every age and environment" (page lix). He gives but little attention to the question as to what the abstract character of jurisprudence may be, and his definition of *justitia* in the terms of *suum quique* of the Institutes is not altogether convincing.

As the avowed purpose of the translations in the Legal Philosophy Series is to bring to the scholarly American lawyer some help in the solution of the questions as to the ultimate nature of law, it is perhaps fair to test this volume by that pragmatic standard. In the three rubrics under which the author presents his subject he sets before himself the three questions as to

the value of teleology, causality, and determinism in the history of law. As to the first, is law a product of a conscious purpose? If so, is it the will of man or of some superior being, God or nature? He concludes that science can neither affirm nor deny final causes. "The greatest jurist has only very vague ideas concerning the services that the laws which he expounds and explains render to society." "The human will is *a* juridicial cause, but is nothing more than a cause." This chapter closes with a negation: "The law is not the human will realized" (page 42).

The main thesis of the author is presented in the second book, which deals with causality in the history of law, and here the author is at his best. His attitude is that of the historian. He studies the causes of legal institutions, but refuses to dogmatize as to any underlying laws of their evolution and growth. At the very beginning, however, he is confronted with what he himself calls an "embarrassing question"—*i. e.*, what is cause? The embarrassment, of course, arises from the fact that we have here a truly metaphysical question. He admits that cause is still an obscure idea, but that it is not necessary to wait for the elaboration of a complete and incontestable doctrine of causality before using it as an instrument of research. It is, however, a tool that may be refined by usage, and the study of cause in the history of law "may make causation itself appear under a new light." The scholastic threefold division of cause into material, formal, and efficient seems to the author interesting but inadequate, as "not three but a hundred, a thousand causal categories might be distinguished without exhausting reality."

The author rejects the analogy of law and biological phenomena and lays but little stress on the ethnographical factor in law. Furthermore, Darwin's principle of "natural selection cannot suffice to constitute the theoretical or practical basis of any part whatsoever of the law" (page 132). Law exists as a product of collective beliefs—*i. e.*, it is a social product, whereas juristic treatises and to a less extent judicial decisions tend to make law "a science of individual logic" (page 192). But this law of the people and the law of the experts act and react upon each other. The cerebral labor necessary for the production of law is its most intimate cause—*i. e.*, it is a psychological product (page 207), but there is no law of progress from simple to complex. Therefore, "from the complex which is law we cannot infer the simple which is psychology." In the study of law one cannot neglect the emotional life. "The work of the legislator is to transform emotional ideals into ideals or principles which can act through their logical forces" (page 257). Legislative and judicial powers often allow themselves to be allured by myths, which arise because of a confusion between words and the objects represented. Abstractions and metaphors are thus transformed into divinities. The author cites as examples the mythical abstractions of liberty and solidarity (page 279). Legal theorists transform the myth into a fiction, valuable only so long as its fictitious character is recognized. But "this irrational intellectuality is one of the most fruitful sources of the law" (page 300). Juridical analysis is a rational though not a strictly logical process. "A logical problem admits of but one solution. The rational prob-

lem nearly always admits of several solutions" (page 309). The brocard, by which is understood a maxim, an aphorism, or juridical rule, has played a great part in the history of law. Juridical analogy has been highly developed into a somewhat artificial technique, but as analogy furnishes only approximate results in the concrete sciences it is not to be expected that it will furnish more accurate results in law (page 365). The translator is to be thanked for transliterating rather than translating the term "construction." In the original it signifies an abstract principle formed by generalizing from several concrete rules. "Construction" emphasizes the process, "generality" the result. Analysis, brocard, analogy, construction, definition, all belong in the category of the rational though not in the logical intellectual. "Not one of them ends in a strictly determined solution" (page 400), but they are among the most efficient forces that have contributed to the development of law.

From the twelfth chapter to the end of the second book, the author seems to have changed somewhat his method of approach. In the chapters on Pure Law, Metaphysical Law, and Law and Life he is confronted with the question, "what *is* justice?" and here his method is more metaphysical in the usual acceptation of the term. He defines metaphysics as "a series of hypotheses upon the unknown conducted according to the methods of rational logic" (page 475). He acknowledges the impossibility of avoiding metaphysics in juridical thinking by citing the case of the free-thinker who had determined never to pronounce the name of God. The free-thinker claimed that he had accomplished his design, saying, "It has not been without difficulty, but I have succeeded, thank God!"

What is justice? asks the author (page 478), and answers it in the words of the Institutes, "*suum quique*"—to everyone his own—which he says "is as precise and full of meaning as any definition could be." On this basis the author develops an "absolute" that would satisfy the most exacting of the metaphysicians. "Mutable justice is devoid of meaning" (page 482). "Whoever demands justice affirms the immutability and transcendency of the idea." "All justice is metaphysical—that is to say, hypothetical." Nothing is to be lost by admitting it "as a hypothetical principle, because it is the sole hope of humanity for the future." This attitude toward metaphysical justice does not entail a profession of religious faith or of belief in God, because the transcendent nature of justice is, even for the most religious mind, above even that of divinity. The *suum quique* formula "implies that the laws derived from the idea of justice group themselves around the individual." "Liberty is one of the most essential elements of justice." The liberty of each can be restricted only by the liberty of the others—*suum quique* again—each his own. "The formula, *suum quique,* recognizes the fact that around each individual there is a nucleus of belongings," his property. Here seems to appear again the eighteenth century natural rights to life, liberty, and property, guarantees for which are contained in all modern constitutional documents.

Although the author approaches more closely the metaphysical treatment in this discussion of the nature of justice, it may well be asked, as indeed

it has been asked, has he reached here a final answer to his question as to the essence of justice? Is this not rather, as Stammler says (Rechtsphilosophie, page 8, note 5), simply "a restatement of the proposition, that each particular legal will shall be directed in the course of the fundamentally right?"

The last book of the volume deals with the doctrine of determinism in law, which "is nothing other than the principle of the universality of natural laws; there is no contingency, no chance." In this book the author returns to his original method of presenting the philosophic concept with his acute criticisms, which, however, are always kindly and constructive. He insists that "metaphysical constructions are not useless and worthy of scorn" (page 615). The present events under a synthetic and more easily comprehensible form, and from the philosophical point of view they throw into relief all the enigmas concealed behind the most positive ideas.

The book closes with a discussion of the philosophy of chance. The mere acknowledgment that such a thing existed in the scheme of the universe would seem to be a refutationof the whole doctrine of determinism. But, here as elsewhere, he is true to his historical method of always stating his conclusions with due reservations. One must not infer, says he, that in the history of law a general indeterminism is to be found. "Although throwing dice is a game of pure chance, there is no chance of throwing a double seven" (page 632). "So long as humanity preserves a sufficient degree of intellectual power, the more or less complete knowledge of categorical truths will constitute an elements of juridical thought." Finally, he vindicates his own method in his concluding paragraph, in which he justifies the study of the philosophy of chance, because "it substitutes the search for probability for the search for certainty. It shows the complexity of causes where others wish to see only a deceptive simplicity. It permits man to utilize, so far as possible, his own ignorance." This may be called by the critics philosophic scepticism. Nevertheless, it is not philosophic nihilism, but a most valuable instrument for research. If scepticism at all, it is, in the words of the author, "a kindly, scrupulous, and searching scepticism which might well be the best instrument of progress for humanity."

The most distinctive feature of the book is, perhaps, the author's unique method of approach to the subject. A previous volume of this series, Berolzheimer's World's Legal Philosophies, has treated the history of legal philosophy in a chronological order, showing how the philosophic content of law has developed from ancient to modern times. Another volume of the series, Miraglia's Comparative Legal Philosophy, has divided the subject vertically rather than transversely, giving an account of the various philosophic concepts lying at the basis of law, together with a discussion of the basic legal categories: person, family, thing, possession, ownership, obligation, etc. This volume, chosen to conclude the series, though called "Philosophy in the Development of the Law," is written by a legal historian and is a history of philosophic ideas presented in an original form. It forms a useful supplement to the other two volumes devoted specifically to the history of legal philosophy, and is a fitting conclusion of the entire series. The

restraint, so characteristic of a true historian, with which all the conclusions are presented is in striking contrast with the dogmatism of many of our juristic philosophers. The style of the author may be compared to that of Ihering in its keenness and suggestiveness, though altogether lacking the satirical element. Its prevailing note is that of kindliness, forbearance, and judicial poise. It seems rather a happy circumstance that because of the limits of space there has been omitted many of the illustrative quotations which the author appended to the several chapters, and that for the same reason there has been some abridgment of the text. Writers on the philosophy of law might well take a leaf from the experience of the writers of fiction who have reduced the three-volume novel to the compass of the short story and have still succeeded in conveying their message to the world quite as effectively as under the old form.

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